

ER-4-6774

OCT 12 1953

OGC Has Reviewed

The Honorable
The Attorney General
Department of Justice
Washington 25, D. C.

Dear Mr. Attorney General:

A question has arisen in connection with the administration of the Agency's employee security program on which I would appreciate your opinion.

I have issued regulations establishing security hearing standards and procedures for the Central Intelligence Agency. These regulations are based on authorities in the Act of August 26, 1950, and those vested in me by the National Security Act of 1947 and are designed to carry out the security program of the President as set forth in Executive Order 10450. The Regulation provides, in accordance with the President's program, for appointment by me of Security Hearing Boards from the Roster maintained by the Civil Service Commission, except in cases where special security considerations of this Agency prevent an outside hearing. Such cases are processed internally under other regulations established by me.

The question presented is whether a case may be referred to a Board chosen from the Roster for hearing and recommendations to me without first suspending the employee concerned. I have in mind several cases, but one in particular where the employee concerned has been on duty for some period of time after a full-field investigation, complete review by our Security Office, and security approval in accordance with our regulations which apply to all employees of the Agency. No additional information other than that considered by us at the time of his original clearance has been received, but allegations have been made about the individual which make it imperative that his case have the most complete and impartial review that can be obtained

under the President's program. It would appear completely inconsistent for me to suspend the employee under these circumstances, and I have carefully reviewed the case and have determined that suspension is not necessary or desirable in the interests of national security. I am not only willing to have all the information reviewed by outside, impartial persons of proper qualifications, but believe it essential under the circumstances to have such a review and re-evaluation.

The Act of August 26, 1950, gives the head of the agency absolute right to suspend or not in any case to be reviewed under that Act, but it then proceeds to set certain requirements for notice and hearings if suspension is directed. I believe this is a necessary and proper protection for a suspended employee and that the statute was so worded to require this protection, but it appears to me that the spirit of Executive Order 10450 implies that the protection should run also to the Agency so that the head thereof can obtain the objective advice of an impartial board. I find nothing in the Act of August 26, 1950, or the Executive Order which forbids reference to a board under these circumstances, and it appears to me to be a highly proper and, in some instances, necessary procedure. This, in fact, seems to be the purport of Section 5 of the Executive Order, which provides that following receipt of derogatory information and prior to suspension under authority granted in paragraph 6 of the Order, the head of each agency "... shall review, or cause to be reviewed, ... the case of such... employee." (Emphasis added)

Based on the foregoing, I feel it is quite proper to appoint a Board from the Civil Service Roster to consider the case of an employee who has not been suspended. If you do not agree that this is permissible under the 1950 Act, the Central Intelligence Agency regulation is based also, as mentioned above, on Section 102(c) of the National Security Act of 1947, which authorizes me in my discretion to terminate the employment of any officer or employee of the Agency whenever I deem such termination necessary or advisable in the interest of the United States. There are no limitations in the Act on the exercise of this discretion, but previous Directors of Central Intelligence and I have generally followed the practice of taking action only after a review and recommendations by an impartial Board. From the time this authority was granted, cases have been processed internally with review by boards drawn from among the top officers of the Agency. However, on establishment of a Civil Service Roster for Security Hearing Boards, I decided that in certain cases and where security would permit outside review the principles

set forth in the Executive Order would best be met by having a Board drawn from this Roster to review and recommend to me on the exercise of discretion under the 1947 Act, as well as the 1950 Act.

I could equally well meet the requirement for impartiality of review by choosing boards from qualified people outside of the Government to review and recommend as might be appropriate, but where the procedures under the Executive Order are consistent with our security and other requirements, I wish, of course, to have recourse to them.

In any case, the responsibility for suspension or termination is mine alone under the 1947 Act, the 1950 Act, and Executive Order 10450. Clearly, there is no requirement for suspension under the 1947 Act, but when there is a determination that employees should be suspended our regulations provide for a statement of charges and board review. Consequently, I feel there is no basis for a claim either by the employee concerned or by anyone taken from the Civil Service Roster to serve on a Security Hearing Board that such a Board is not properly constituted solely on the ground that the subject of the case has not been suspended by me.

Sincerely,

SIGNED

Allen W. Dulles
Director

OGC:TMF:LRH:imm

Rewritten by AWD:meo (12 Oct. '53)

cc: DCI (2)

Director of Security

OGC (2)

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